

REMARKS

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 were previously pending in the application. Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and/or the following remarks. By this Amendment/Response, new claim 183 has been added and claims 98, 113, 127, 139, 152, 168 and 182 have been amended herein to provide clarification, better track commercial implementations, and/or to correct minor informalities. Applicants submit that support for the new and amended claims may be found throughout the originally filed specification, drawings and claims and that no new matter has been added by way of this Amendment/Response. Applicants maintain that the original claims are in condition for allowance and explicitly reserve the right to add/pursue the claims as originally filed at a later date and/or in one or more continuation applications. Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-183 are currently pending.

Claim Rejections - 35 U.S.C. § 103

Claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-182 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Charles Boisseau, "Netting cheap fares/Some are taking cyberspace route" (hereinafter, "Boisseau"), in view of Chung et al. (US Patent No. 5,644,721) (hereinafter, "Chung"). Although Applicants respectfully traverse these rejections and submit that a *prima facie* showing of obviousness has not been made and that the applied references, taken alone or in combination, fail to discuss or render obvious every element of each pending claim, Applicants have amended the independent

claims to provide clarification and/or to better track commercial implementations. Independent claim 98 recites, *inter alia*,

A system, comprising:
...
receive a conditional purchase offer including an offer price from a customer utilizing said web page for purchasing travel services;
...
compare said conditional purchase offer with seller inventory and compare said offer price with seller pricing information stored on a central reservation system to determine if said conditional purchase offer is acceptable;
...

Applicants submit that the applied references, taken alone or in combination, fail to discuss or render obvious at least these elements recited in independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request clarification as to what specifically in the applied references the Examiner is alleging as being analogous to "an offer price from a customer," "seller pricing information," and "comparing said offer price with seller pricing information ... to determine if said conditional purchase offer is acceptable," as recited in independent claim 98.

Applicants also respectfully traverse the pending rejection's citation to Boisseau's abstract ("full price for first class seats, \$475 paid + \$3700 saved = \$4175 total", May 29, 2008 Office Action, p. 4, ¶ 1) as allegedly discussing "compare said conditional purchase offer with ... seller pricing information to determine if said conditional purchase offer is acceptable," as recited in independent claim 98. Boisseau states, "a bidder won a transcontinental first-class ticket for \$475, a savings of more than \$3,700 off the full price" (Boisseau, Abstract, emphasis added), and it is clear that comparing "said conditional purchase offer with ... seller pricing information to determine if said conditional purchase offer is acceptable" is not taking place if a

bidder has won an auction. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request that he either cite something else in the applied art as allegedly discussing the claim elements or provide a clear and detailed explanation of why he believes his inference of the claim elements is justified from this portion of Boisseau so that Applicants can fully reply and provide rebuttal arguments at the earliest opportunity.

Applicants also submit that the pending rejection has failed to put forth a *prima facie* showing of obviousness with regard to the pending claims. MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (i) the relevant teachings of the prior art relied upon,
- (ii) the differences in the claim over the applied references,
- (iii) the proposed modification of the applied references to arrive at the claimed subject matter, and
- (iv) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

Applicants submit that the rejections in the pending Office Action do not establish each of these requirements.

Applicants submit that the pending rejection has failed to consider every element of the pending claims. By way of example only, Applicants submit that the pending rejection alleges, "Claim 182 is rejected on the same grounds as claim 98." (May 29, 2008 Office Action, p. 11). Independent claim 98 recites, *inter alia*,

A system, comprising:

...
receive a payment identifier specifying a financial account for use in providing guaranteed payment for at least the amount of said offer price for said travel services if said conditional purchase offer is accepted;

compare said conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if said conditional purchase offer is acceptable;

...

Claim 182 recites, *inter alia*,

A system, comprising:

...

receive a payment identifier specifying a financial account for use in providing guaranteed payment for at least the amount of said offer price for said travel services if said conditional purchase offer is accepted;

and subsequently:

compare said conditional purchase offer with seller inventory and seller pricing information stored on a central reservation system to determine if said conditional purchase offer is acceptable;

...

The pending rejection has completely ignored the phrase "and subsequently" in independent claim 182 by grouping the rejection of claim 182 with the rejection of 98. The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," [§ 2106 II(C), emphasis added] and, "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." [§ 2143.03, emphasis added]. Furthermore, MPEP § 707.07(d) prescribes that "A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group." Applicants submit that, by ignoring claim elements and impermissibly grouping claims having different claim elements in a common rejection, the pending rejection has failed to put forth a *prima facie* showing of obviousness and, accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request that every claim element be addressed and that each claim be treated separately in determining patentability over the applied references.

Applicants also note that the pending rejection concedes, with reference to dependent claim 111, that "Boisseau does not specifically disclose that processor is further operative with program to obtain pre-authorization to charge financial account for travel services

prior to consideration of the CPO," (March 29, 2008 Office Action, p. 8, ¶ 3) and does not make any allegation that the claim elements are discussed or rendered obvious by the applied art. Applicants direct the Examiner's attention to MPEP 707.07(j), which states, "Where the examiner is satisfied that the prior art has been fully developed and some of the claims are clearly allowable, the allowance of such claims should not be delayed." Accordingly, Applicants respectfully request clarification as to what basis the Examiner has rejected the claim on and why any basis of rejection has not previously been provided.

Furthermore, Applicants submit that the rejection in the May 29, 2008 Office Action has not established why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made by dissecting the claim elements and evaluating them in isolation, by failing to provide sufficient objective rationale for modifying the applied references, and by not providing a discussion of the level of ordinary skill in the art.

MPEP § 2106 (II)(C) prescribes that, "USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation." Applicants submit that the pending rejection has dissected the claims into discrete components and alleged obviousness of dissected claim elements in isolation instead of with reference to the claims as wholes. For example, independent claim 98 recites, *inter alia*, "compare said conditional purchase offer with seller inventory and seller pricing information ... to determine if said conditional purchase offer is acceptable." The pending rejection, on the other hand, states:

Boisseau discloses ...
 comparing the conditional purchase offer with
 seller inventory (see, for example , references to seats
and selling inventory that would otherwise go empty, such as first-
class seats, 'An often heard analogy ... On average, nearly two-thirds
of an airline's seats go empty...') and
 seller pricing information (see Abstract, for example, for
references to full price for first class seats, \$475 paid + \$3700 saved
= \$4175 total)

to determine if said conditional purchase offer is acceptable (see, for example, Abstract, and references winning bidder).

[May 29, 2008 Office Action, pp. 2-4, original line breaks and indentation]

Applicants submit that the pending rejection's unconnected references to disparate aspects of Boisseau, such as the existence of available seats on airline flights (e.g., "On average, nearly two-thirds of an airline's seats go empty," Boisseau, p. 1, ¶ 4), of prices for seats, or of a winner in an auction for seats do not suffice to show "compare said conditional purchase offer with seller inventory and seller pricing information ... to determine if said conditional purchase offer is acceptable," as recited in independent claim 98. The pending rejection has not even cited any aspect of the applied references as allegedly discussing or rendering obviousness "compare said conditional purchase offer," but has merely cited to disconnected components of the applied reference to allegedly show "seller inventory" and "seller price." Applicants submit that, in doing so, the pending rejection has failed to respect the claim elements and the relationships therebetween as they exist within the claims as wholes. MPEP § 2106 (II)(C) states that "the claim as a whole must be considered." Because the pending rejection has dissected the claims into discrete elements and evaluated obviousness of those elements in isolation, Applicants submit that a *prima facie* showing of obviousness has not been made and respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request that he refrain from dissecting claim elements and rather indicate how he believes the cited references allegedly discuss or render obvious the claim elements as wholes and in relation to the claims as wholes. In particular, Applicants respectfully request that the Examiner indicate specifically what in the applied references he believes is allegedly analogous to, "compare said conditional purchase offer," "compare said conditional purchase offer with seller inventory," "compare said conditional purchase offer with ... seller

pricing information," and "compare said conditional purchase offer with seller inventory and seller pricing information to determine if said conditional purchase offer is acceptable," as recited in independent claim 98.

Applicant further submits that the Examiner has not provided sufficient objective rationale for modifying the applied references. By way of example only, Applicant notes that the pending rejection alleges,

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Boisseau and Cheung (sic) to disclose creating a passenger name record, Transmitting a PNR to a CRS, because the incorporation of such features is no more than the predictable use of prior art elements according to their established function." (May 29, 2008 Office Action, p. 4, ¶ 7)

In another example, Applicants notes that the pending rejection acknowledges, with reference to dependent claim 102, that "Boisseau does not specifically disclose that a predefined sequence is based upon the commission rates paid by sellers," (May 29, 2008 Office Action, p. 5, ¶ 5) but goes on to allege,

It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Boisseau to disclose that a predefined sequence is based upon the commission rates paid by sellers because the incorporation of such features is no more than the predictable use of prior art elements according to their established function. (May 29, 2008 Office Action, p. 5, ¶ 6).

Similar rationales for modifying the applied references have been applied elsewhere and throughout the May 29, 2009 Office Action. Applicants submit that the alleged rationales for the proposed modifications of the references constitute general allegations that are generic, unsubstantiated, and fail to articulate any rational underpinning pointing to the specific modifications proposed in the pending rejection. Applicants submit that the general allegation that claim elements are "no more than the predictable use of prior art elements according to their established function," (e.g., May 29, 2008 Office Action, p. 4, ¶ 7) without some explanation of

why the Examiner believes the use is predictable, what the alleged established functions of the prior art elements referred to are, and how the use recited in the claims is in accordance with those established functions is insufficient to support the legal conclusion of obviousness. The inadequacy of the rationales provided in the pending rejection is particularly stark in the rejection of dependent claims such as claim 102 (referenced above), where the May 29, 2008 Office Action has not only put forth the same general allegation of "predictable use of prior art elements according to their established function," but has not even cited to any reference or taken Official Notice with regard to the claim elements "wherein said processor accesses information on said central reservation system for each seller in a predefined sequence," "said predefined sequence ... based upon the commission rates paid by sellers," as recited in dependent claim 102.

Applicants submit that, by failing to provide sufficient objective rationale for the proposed modifications of the applied art and by making general allegations of obviousness without even citing to an applied reference or taking Official Notice, the pending rejection has necessarily relied on knowledge gleaned only from Applicants' disclosure. MPEP §2141 (III) states, *inter alia*, "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious," and that, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." As the pending rejection has failed to supply the requisite objective rationale for the proposed modifications of the applied art, Applicants submit that a *prima facie* showing of obviousness has not been made and respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request that he cite to a reference or take Official Notice with regard to every element of each pending claim (including the dependent claims), that he point to specific rationales for the proposed modifications of the prior art that are drawn from the references themselves, and that he provide

clarification and some explanation as to how he believes the stated rationales point to the specific modifications of the applied references proposed in the pending rejection.

Applicants further submit that the pending rejection has failed to provide any indication of the level of ordinary skill in the art at the time of Applicants' invention. MPEP § 2141 (II)(C) states, "Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill." The pending rejection refers to, "one of ordinary skill in the art at the time the invention was made," (see, e.g., May 29, 2008 Office Action, p. 4, ¶ 7) but has provided no indication or discussion of which art is described or the level of ordinary skill associated therewith. The rejection's reference to "the art" is overly general and, consequently, does not provide a specific indication of the level of ordinary skill pertinent to the claimed subject matter. MPEP § 2141.03 (III) states, "The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." For example, when the pending rejection states, "so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper," (May 29, 2008 Office Action, p. 12, ¶ 3) and yet provides no indication of the pertinent art or the level of ordinary skill alleged associated therewith. Applicants are unclear as to what exactly the Examiner is alleging with regard to the level of ordinary skill and, thus, are not in a position to provide a complete reply that is most suited to addressing the Examiner's concerns. As no indication of the level or ordinary skill has been provided, Applicants submit that the rejection applies impermissible hindsight and has not made a *prima facie* showing of obviousness. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request that he identify the pertinent art, discuss the level of

ordinary skill alleged to be associated therewith at the time of the invention, and clarify why he believes the claimed subject matter would have been obvious to one possessing that level of skill.

Although of different scope than independent claim 98, Applicants submit that independent claims 113, 127, 139, 152, 168 and 182 are also patentable over Boisseau in view of Chung for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Furthermore, Applicants submit that dependent claims 99-111, 114-125, 128-137, 140-150, 153-163, 165, 167, 169-177, 179 and 181, which depend directly or indirectly from independent claims 98, 113, 127, 139, 152, 168 and 182, are also patentable over Boisseau in view of Chung for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to the independent claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Conclusion

Consequently, the references cited and/or any official notice taken by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, Applicants respectfully submit that the supporting remarks and claimed inventions, the pending claims 98-111, 113-125, 127-137, 139-150, 152-163, 165, 167-177, 179 and 181-183, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated

from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicants do not concede that any such elements are found in the prior art and/or within any official notice taken in the office action, and as such, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art, including any official notice taken in the office action, and explicitly reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

AUTHORIZATION

The Commissioner is hereby authorized and requested to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT3.

In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT3.

Respectfully submitted,
Chadbourne & Parke LLP

Dated: June 24, 2008

By: /Walter G. Hanchuk/

Walter G. Hanchuk

Registration No. 35,179

Chadbourne & Parke, L.L.P.
30 Rockefeller Plaza
New York, NY 10112
212-408-5100 Telephone
212-541-5369 Facsimile